

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JAMES E. SYKES

§

VS.

§

CIVIL ACTION NO. 9:18-CV-88

CECILIA C. OKOYE

§

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff James E. Sykes, a prisoner confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil action pursuant to 42 U.S.C. § 1983 against Cecilia C. Okoye.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the action pursuant to Federal Rule of Civil Procedure 41(b).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and the pleadings. Proper notice was given to Plaintiff at his last known address. *See* FED. R. CIV. P. 5(b)(2)(C). No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

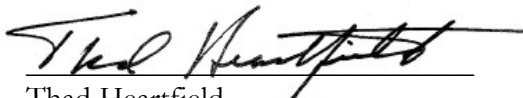
Because the statute of limitations would bar future litigation of Plaintiff's claims, a dismissal would act as a dismissal with prejudice. A dismissal with prejudice is appropriate only if there is a clear record of delay or contumacious conduct by the plaintiff, and if lesser sanctions would not serve the interests of justice. *Coleman v. Sweetin*, 745 F.3d 756, 766 (5th Cir. 2014). In this case, Plaintiff has not exhibited a clear record of contumacious conduct, but his recent failure to comply with the order regarding his *in forma pauperis* status, to change his address after his release from prison, or to claim the mail sent to him at his last known address provided by the defendant are inconsistent with an intent to proceed with this action.

The court has considered imposing lesser sanctions and found them inadequate to address the current situation. Because Plaintiff was recently released from prison, the imposition of monetary sanctions is almost certainly futile. A dismissal is the only sanction available in this instance, but the court will lessen the sanction by allowing Plaintiff to reopen the case by contacting the court within thirty days of the date the judgment is entered.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (document no. 127) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this the **31** day of **August, 2022**.


Thad Heartfield
United States District Judge